



PUBLIC UTILITIES COMMISSION

CONSUMER ASSISTANCE DIVISION BULLETIN 90-3

DATE: October 23, 1990

TO: Maine Telephone Companies, Local Exchange Carriers

FROM: Barbara R. Alexander, Director, Consumer Assistance Division *BA*

RE: Disconnection of Local Service for Failure to Pay Non-Basic Utility Service

The Consumer Assistance Division (CAD) has recently become aware that Maine local exchange carriers may not be complying with the provision of Section 8(A)(1) of Chapter 810 of the Commission's rules that prohibits disconnection for failure to pay for non-basic utility service, specifically as that rule relates to 1-900 charges. The CAD interprets the term "non-basic utility service" to include charges for audiotex services or 1-900 calls (no 976 service has yet been approved for Maine telephone companies).

Background. Local exchange carriers have entered into billing and collection contracts with providers of 1-900 interstate services. In 1986, the Federal Communications Commission (FCC) deregulated interstate billing and collection services and preempted state regulation of local exchange carrier billing and collection for interstate services of interexchange carriers, Detariffing of Billing and Collection Services, CC Docket 85-88, 102 F.C.C. 2nd 1150, 1177 (1986). (See also the attached FCC decision which detariffed AT&T's 1-900 Billing and Collection Services, dated April 4, 1989). However, states were specifically allowed to regulate whether local exchange carriers could disconnect local service for failure to pay services billed on behalf of interexchange carriers. While providers of 1-900 services buy access from interexchange carriers, the 1-900 charges are not regulated by either the interexchange carriers or the FCC.

Chapter 810. Maine's Chapter 810, Residential Utility Service Standards for Credit and Collection Programs, defines "non-basic" utility service (Section 2(L)) to include services provided by a utility that is either not regulated by the Maine PUC or not contained in the utility's tariffs on file with the PUC. An exemption is provided for "toll service charges, including interstate access charges, billed by a telephone utility under a

contractual agreement with the provider of the toll service." This exemption is further limited by the provision of Section 8(C), which prohibits the disconnection of local exchange service "for a customer's failure to pay for interstate service unless the telephone utility or the Commission is authorized by the provider of the interstate service to mediate and resolve disputes."

It is the opinion of the CAD that 1-900 services billed by local exchange carriers is a "non-basic utility service." While the term "toll service charges" is not defined in Chapter 810, it was intended to describe the traditional long distance message toll service billed by local carriers on behalf of interexchange carriers. Message toll service, as well as interstate access charges (often referred to as "end user charges" or "subscriber line charges"), are tariffed charges, regulated by the FCC. The ability to make long distance calls is often included in the definition of "universal service" which, therefore, justifies its special treatment in the rule. 1-900 charges, on the other hand, do not appear in any regulated telephone company's state or interstate tariffs, nor are they regulated by any state or federal governmental agency.

The provisions of Section 8(C) do not change this interpretation. Section 8(C) addresses "interstate services" billed by local exchange carriers; the terms "non-basic utility service" is not used in Section 8(C). Therefore, the purpose of Section 8(C) was to further regulate the disconnection of local services that was otherwise allowed by virtue of the definition of "non-basic utility services." If a charge could be included in an amount overdue (i.e., the charge was not excluded by subsections (A)(1) through (4), subsection (C) further regulates the ability of a telephone utility to disconnect local service for failure to pay for interstate services allowed to be included in the amount overdue.

Required Action. All local exchange carriers should notify the Commission by October 31, 1990 on how they plan to conform with this interpretation. In particular, telephone utilities should immediately take steps to halt disconnection of local service for failure to pay 1-900 charges included in an amount overdue appearing on any disconnection notice. Telephone companies may, of course, continue billing for these services and may collect for nonpayment in other ways.

BA/kp
Attachment

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T 900 Dial-It
Services and Third Party
Billing and Collection
Services.

File No. ENF-88-05

MEMORANDUM OPINION AND ORDER

Adopted: April 4, 1989;

Released: April 12, 1989

By the Chief, Common Carrier Bureau:

1. This interpretative ruling addresses three issues involving AT&T's 900 Dial-It services, currently offered pursuant to AT&T Tariff No. 1, § 5.1, *et seq.*¹ These issues are

1. Whether 900 service offerings should be classified as common carrier service;
2. Whether associated billing and collection services are a common carrier offering; and
3. Whether mixed offerings of tariffed and non-tariffed functions involving 900 service require additional guidelines to assure proper regulatory treatment of these services.

The aforesaid matters have been brought to our attention by members of Congress during hearings² and by correspondence from parties with business or related interests in the provision of 900 services.³

2. Apparently, some AT&T 900 Dial-It service subscribers currently receive a mixed package of tariffed and non-tariffed services from AT&T, and this has the potential to cause marketplace confusion absent guidance from us as to the proper regulatory treatment of these services. As set out herein, we confirm that based on current law and regulation, certain AT&T 900 Dial-It services are common carrier services which AT&T must continue to offer pursuant to tariff. We find that other AT&T 900 Dial-It services are enhanced services pursuant to that definition contained in 47 C.F.R. § 64.702(a) and, as a result, must be detariffed and offered competitively in conformity with those guidelines developed by the Commission in the *Third Computer Inquiry* (Computer III).⁴ We also find that AT&T Premium Billing arrangements offered to Dial-It 900 service sponsor/subscribers are not common carrier communications services and, for the reasons set out herein, should continue to be offered on a non-tariffed basis.

1. AT & T Dial - It 900 Services

A. Background

3. The Commission first considered the proper regulatory treatment of mass calling services, including AT&T-offered Dial-It 900 services, in the *Second Computer Inquiry* (Computer II).⁵ Pursuant to that inquiry, the Commission distinguished basic transmission service, defined as "the common carrier offering of transmission capacity for the movement of information between two points" (basic service), from enhanced services which utilize underlying basic service for the provision of various information services, including information storage and retrieval services. In the *Reconsideration Order* in Computer II, the Commission determined that AT&T Dial-It 900 services fell squarely within the definition of enhanced services since Dial-It 900 services, as then configured by AT&T, provided subscribers with information, stored in the AT&T network, and allowed subscriber interaction with such network-stored subscriber information.⁶ At the same time, the Commission recognized that Dial-It service included certain "network control" features properly associated with basic service and tariffable as such.⁷ As configured in the AT&T tariff, however, the Commission found 900 service to be enhanced and thus, properly detariffed.¹⁰

4. Thereafter, AT&T filed tariff revisions designed to allow continued provision of Dial-It 900 service as a basic service in conformance with the Commission's findings. AT&T's modifications included, *inter alia*, reconfiguring certain Dial-It 900 services so that stored or live information would be transmitted directly from sponsor premises rather than from a point within AT&T's network. In filing its revised tariff, AT&T requested, alternatively, that, if the Commission still concluded that Dial-It 900 service was enhanced, the company should be allowed an "indefinite extension" of the detariffing date mandated by the Commission's Computer II decision because "as a practical matter, [Dial-It 900 service] can only be provided over the public switched network."¹¹

5. The Common Carrier Bureau (Bureau) responded to AT&T's Dial-It 900 service tariff modifications by letter dated October 21, 1982. The Bureau noted the AT&T tariff modifications and offered that, "upon initial analysis, it appears that [AT&T] modifications to the service do change some of the features which led the Commission to classify Dial-It as enhanced . . ."¹² However, the Bureau also noted concern whether all aspects of AT&T Dial-It 900 service comported with Computer II guidelines.¹³ The Bureau did not make a specific finding that the offering was basic service, but permitted the tariff to go into effect. The Bureau requested AT&T to submit information one year thereafter concerning service development and revenues earned, and declared that if, in practice, revised Dial-It 900 service did not conform to Computer II requirements, "appropriate corrective measures must be undertaken absent any waiver of Commission rules."¹⁴

6. The questions raised by Congress and the Ondulich informal complaint, *supra*, raised additional concerns with respect to the proper regulatory treatment of Dial-It 900 services. As part of its inquiry, the Bureau addressed various questions to AT&T about Dial-It 900 services and associated billing and collection services. The Bureau stipulated that it would submit AT&T's responses for public comment.¹⁵ The inquiry requested AT&T, *inter alia*, to:

Explain AT&T's position with respect to whether 900 service should be classified as a basic or as an enhanced service. In your response, describe (a) the facilities involved in providing 900 services and the function(s) these facilities perform in providing this service, (b) the extent to which the storage and interactive functions associated with AT&T's 900 service are being performed by AT&T rather than the message provider, (c) the manner in which 900 services and competing services are offered to the public, and (d) the state of competition for services for which demand can be viewed as cross-elastic with 900 services.¹⁶

7. The Bureau also asked AT&T to explain why it tariffed promotional compensation offered to Dial-It 900 Service subscribers. On April 4, 1988, the Commission issued a Public Notice announcing AT&T's response to the Bureau's letter of inquiry and soliciting public comment.¹⁷ Three parties submitted comments in response to the Public Notice.¹⁸

B. AT & T Response

8. In its response to the Bureau, AT&T describes two types of Dial-It 900 services and argues that both should be considered basic services.

9. The first type of Dial-It 900 service described is termed "Information Arrangements" by AT&T. Pursuant to an Information Arrangement, according to AT&T, the sponsor/subscriber's message "originates from the sponsor's premises and is recorded and stored by the sponsor using a simple tape recorder or other customer premises equipment [CPE]."¹⁹ The sponsor plays its message continuously over the AT&T network. Within the network, the sponsor message is directed to AT&T's Operations DIAL-IT Administration Center, a central provisioning point located in Kansas City, Missouri. From the center, the sponsor's message is distributed, by private line, to eight mass announcement system nodes which consist of specially-equipped JESS switches. Equipment and programming at the nodes allow 896 callers, per node, to simultaneously listen to the sponsor's message, thus allowing for a network-wide capacity of 7,168 simultaneous calls.²⁰

10. All sponsors subscribing to AT&T Information Arrangements share the 896 available ports at each node, while mass announcement system programming ensures that callers only access the particular sponsor program which is dialed. AT&T declares that this mass announcement configuration "does not permit any interaction between callers and information stored in the network."²¹ Finally, AT&T argues that "[the] fact that the sponsor messages are stored outside AT&T's network confirms that DIAL-IT 900 Service Information Arrangements do not fall within the 'enhanced services' definition."²²

11. The second type of Dial-It 900 service provided by AT&T is described as "Call Count Arrangements" by AT&T. Pursuant to Call Count Arrangements, AT&T provides sponsor/subscribers with two or more 900 numbers, each of which corresponds to a specified choice, for example, a "yes" or a "no" answer to a sponsor/subscriber query or poll. Calls to each 900 number are counted by AT&T, and the results are presented to the sponsor/subscriber. Callers receive a generic message, from within the AT&T network, which informs the caller that the call has been completed.²³ AT&T maintains that this

call acknowledgement cannot constitute an enhanced service since the message amounts to call completion communications, and the Commission has held that the enhanced services definition does not extend "to communications between a subscriber and the network itself for call setup, call routing, call cessation, calling or called party identification, billing and accounting."²⁴ AT&T discloses that the network capacity of Call Count Arrangements is 28,000 calls per minute employing its eight nodes, or 108,000 calls per minute utilizing the additional 12 mini-nodes.²⁵

12. Finally, AT&T states that virtually all interexchange carriers' [IXCs] switched services, including 800 and MTS-like services are "potentially competitive" with Information Arrangements, while noting that such other switched services provide neither the simultaneous mass announcement capacity of AT&T Dial-It 900 service nor the call count feature.²⁶ AT&T also notes that various Bell Operating Companies (BOCs) have begun offering 900 exchange access service that allows IXCs to provide originating 900 mass calling services and that other local exchange carriers (LECs) can be expected to follow suit, thus promoting 900 mass announcement service competition.²⁷

C. Commenting Parties

13. The commenters who addressed the question of the proper regulatory treatment of Dial-It 900 service generally support AT&T's argument that such services are basic rather than enhanced.²⁸ Centel argues that AT&T's Information Arrangements clearly are not enhanced services since the recorded announcement originates from the sponsor/subscriber's premises; there is no "discernible" interaction between callers and the networks; and computer applications are not utilized to process information as defined under 47 C.F.R. § 64.702(a).²⁹ Similarly, Centel submits that AT&T's Call Count Arrangement is not an enhanced service since the only interaction between callers and the network is for call termination or cessation purposes.³⁰

14. Telephere agrees that AT&T's role in providing 900 services "may be that of a provider of basic services," but urges us not to conclude that, for this reason, all end-to-end 900 services should be classified as basic.³¹ Specifically, Telephere states that the Commission previously has found both storage and retrieval services and call counting services to be enhanced where such services were provided within the network.³² Given this finding, Telephere urges us to rule "that 900 services are enhanced when the provider of the storage, retrieval, interaction, and processing features orders and resells services to form its own network."³³

D. Discussion

15. Pursuant to the Commission's Computer II and Computer III decisions, enhanced services are distinguished from basic service by their functional characteristics. Thus, basic telecommunications service is defined as a virtually naked transmission capacity, offered by a common carrier, "for the movement of information between two points."³⁴ Enhanced services, on the other hand, provide something more, described in 47 C.F.R. § 64.702(a), which defines enhanced services pursuant to a three part definition, as:

[s]ervices, offered over common carrier transmission facilities used in interstate communications. [a] which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; [b] provide the subscriber additional, different, or restructured information; or [c] involve subscriber interaction with stored information . . .

47 C.F.R. § 64.702. This definition has been used by the Commission, in the past, in ruling that information storage and retrieval services provided by AT&T are, properly considered, enhanced rather than basic services.³⁵

16. However, as presently configured and tariffed, AT&T Dial-It 900 Information Arrangement service no longer provides for interaction with subscriber information stored in the network. Instead, subscriber information is provided by the subscriber, and AT&T facilities are used merely to provide a transmission path from callers to subscriber-stored information. Thus, the Bureau cannot conclude that AT&T Dial-It 900 Information Arrangement service qualifies as enhanced service pursuant to the third clause of 47 C.F.R. § 64.702(a).

17. Neither is AT&T Dial-It 900 Information Arrangement service properly characterizable as enhanced service pursuant to the first two clauses of the definition. Such service does not "employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information."³⁶ Nor does the service provide subscribers with "additional, different, or restructured information."³⁷ For all these reasons, and pursuant to the Commission's decisions in Computer II and Computer III, we conclude that AT&T Dial-It 900 Information Arrangement service is a basic transmission service which AT&T, as a dominant carrier,³⁸ must continue to offer pursuant to tariff.

18. Based on the record before us, however, we cannot similarly conclude that AT&T Call Count Arrangement service is a basic service. First, we note that the Commission specifically found call counting services to be enhanced services in the Reconsideration Order in Computer II, and ordered that such services be detariffed except for "the transmission component of the service."³⁹ Although the AT&T call counting service which the Commission declared to be enhanced differed in some details from the present service, the differences in this case do not compel a conclusion that Call Count service, as presently offered, must be considered basic service.

19. In the call counting service considered in the Computer II Reconsideration Order, AT&T provided that a caller accessing a 900 number assigned to a sponsor/subscriber would hear a subscriber-recorded message, transmitted from within the network, announcing that the call had been received. In its Dial-It 900 service tariff revision filed subsequent to the Commission's Reconsideration Order, AT&T altered this arrangement so that a network message would be heard.⁴⁰ Thus, AT&T and Centel have urged us to conclude that there is no longer any interaction with subscriber information stored in the network and, thus, Call Count service is a basic service.⁴¹

20. Both AT&T and Centel misunderstand the thrust of the Commission's analysis. The conclusion that Call Count service is an enhanced service follows from a functional consideration of what the service provides. A Call Count service sponsor/subscriber does not seek a transmission path from AT&T in order to provide, e.g., an in-

formation service to his customers. Rather, the Call Count sponsor/subscriber obtains that service only in order to obtain substantive information from AT&T, for example, how many callers have voted "yes" or "no." The provision of such information is not incidental to the provision of basic service by AT&T. Instead, provision of the non-telecommunications information is the essential service provided.

21. Thus, a Call Count subscriber does not obtain transmission service in order to facilitate his own enhanced service, but, rather, obtains "additional, different, or restructured information." 47 C.F.R. § 64.702(a). Our review of this service leads us to conclude that AT&T provides the basic service (i.e., the transmission facility), in effect, to itself in order to provide an information service to the Call Count sponsor/subscriber. Such an information service is clearly an enhanced service and, as a result, may not be tariffed and offered as basic service by AT&T absent waiver of the Commission's Rules.⁴² Further, AT&T must offer Call Count service in conformity with the non-structural safeguards developed by the Commission in Computer III.⁴³

II. Billing and Collection Issues

A. Background and Comments of the Parties

22. As noted above, Bureau concern about AT&T billing and collection services offered in connection with Dial-It 900 service was triggered by the Wildmon letter⁴⁴ and the Ondulich complaint.⁴⁵ Specifically, the latter alleged that AT&T was offering two functionally identical Dial-It 900 services, one pursuant to tariff and one pursuant to contract.⁴⁶ Consequently, questions concerning AT&T billing and collection services offered in conjunction with Dial-It 900 services were included in the Bureau's February 26, 1988 letter of inquiry to AT&T. In summary, the letter asked AT&T to 1) explain the legal and factual basis for treatment of billing and collection services as non-tariffed services; 2) explain how billing information is or could be provided to billing and collection service competitors and describe the state of competition for such services; 3) submit a current copy of the billing and collection contract; 4) explain how the AT&T Dial-It 900 services tariff and the billing and collection services contract inter-relate including, *inter alia*, how the tariff's limitations of liability provisions could present a defense to complaint allegations concerning the billing and collection arrangement; and 5) discuss whether the telephone service of billing and collection customers is disconnected for failure to pay AT&T-billed sponsor/subscriber charges.⁴⁷

1. AT & T Comments

23. In its reply to the Bureau's inquiry, AT&T argues that billing and collection service associated with Dial-It 900 service, known as "Premium Billing", is not a communications service and, as such, is separate and distinct from Dial-It 900 service offered pursuant to tariff. Specifically, AT&T argues that Premium Billing is a third party billing and collection service, offered to enhanced service providers who subscribe to Dial-It 900 service, by which AT&T, as the sponsor/subscriber's agent, collects sponsor/subscriber charges from the sponsor/subscriber's customers⁴⁸ and is separate and apart from Dial-It 900 services tariff charges assessed against the sponsor/subscriber by AT&T.

24. Given the foregoing, AT&T asserts it was proper for it to offer Premium Billing pursuant to contract in light of the Commission's 1986 decision to detariff LEC-provided billing and collection services offered to IXC's,⁴⁹ and the Commission's 1987 declaration that billing services provided by AT&T to third party shared Enhanced Private Switched Communications Service (EPSCS) users are not Title II communications services and, consequently, may not be tarified.⁵⁰

25. Explaining the relationship between its non-tariffed Premium Billing service and tariffed Dial-It 900 services, AT&T relates that Premium Billing is provided only to Dial-It 900 service sponsor/subscribers who subscribe to the tariff's so-called Sponsor Paid option whereby they become responsible for all tariffed charges associated with callers' use of the service.⁵¹ Thus, the sponsor/subscriber is responsible for paying tariffed charges for all calls regardless whether AT&T is successful in collecting Premium Billing charges on behalf of the sponsor/subscriber.⁵² Moreover, according to AT&T, its Premium Billing contract states that it covers sponsor/subscriber charges only, and that AT&T "has no right, title or interest in the sponsor charges which it collects for and remits to sponsors."⁵³ AT&T asserts that sponsor/subscribers are not required to take Premium Billing as a concomitant to tariffed Dial-It 900 services and, indeed, tariffed service subscribers are not "entitled" to receive Premium Billing service.⁵⁴ Instead, they are separate services. Dial-It 900 services assessed against sponsor/subscribers pursuant to tariff and Premium Billing performed by AT&T as a non-tariffed non-communications service whereby AT&T bills and collects the sponsor/subscriber's charges to callers for the sponsor/subscriber's service.

26. AT&T also declares that Premium Billing cannot and does not alter the rates, terms or conditions of Dial-It 900 services in any way. Conversely, according to AT&T, the Dial-It 900 services tariff's limitations of liability provisions were never asserted as a defense to a claim for damages under the Premium Billing contract, e.g., in the Ondulich complaint. Rather, AT&T denied liability under the contract, in that case, "on the ground that AT&T's obligations under the Premium Billing contract were to bill sponsor charges for all completed calls, and that these obligations were fulfilled."⁵⁵ Thus, the tariff defense was raised only as per AT&T's tariff obligations and AT&T's alleged failure to provide for the proper assignment of 900 numbers and for the completion of 900 service calls.⁵⁶

27. AT&T claims that its Premium Billing contract in no way alters minimum call/call minute requirements which are imposed, by tariff, on all Dial-It 900 service sponsor/subscribers.⁵⁷ According to AT&T, if sponsor/subscribers fail to meet the tariff's minimum call/call minute requirements they are charged a penalty "whether or not they have also contracted for Premium Billing, and regardless of the terms of the Premium Billing contract."⁵⁸

28. As for possible competition in the provision of billing and collection services associated with Dial-It 900 service, AT&T argues that such services are analogous to the billing and collection services offered by LECs and other IXC's. Thus, in Premium Billing, the recording for billing purposes, of calls is performed by the LECs who perform billing and collection of sponsor/subscriber charges as agents for AT&T.⁵⁹ AT&T notes that the call

detail record made available to AT&T contains calling numbers, destination and call duration information, but not the caller's name and address. A third party wishing to provide billing and collection services would require the LEC's name and address data bases to match calls to callers. AT&T notes that the Commission has required LECs to make call detail information available "on a reasonable basis."⁶⁰ AT&T argues that the fact of competition for billing of IXC services in general indicates the presence of market forces sufficient to respond to excessive rates or practices by 900 service billing and collection providers.⁶¹

29. Finally, AT&T states that the local telephone service of callers who do not pay assessed Premium charges is not disconnected because such premium charge payments are not tariffed charges. AT&T repeats that Premium Billing is provided only to Dial-It 900 service subscribers who elect the Sponsor Paid service option. Therefore, Dial-It 900 service subscribers alone are responsible for tariffed charge payments and AT&T reserves the right to discontinue a sponsor/subscriber's 900 service if the sponsor/subscriber fails to make payments.⁶² AT&T states that it is "working with all [LECs] performing billing on AT&T's behalf" to ensure that non-payment of sponsor charges, pursuant to Premium Billing, "does not inadvertently result in customer [i.e., caller] disconnection."⁶³

2. Comments of Other Parties

30. Centel supports AT&T's conclusion that its Premium Billing service should be offered competitively since it is a non-communications offering.⁶⁴ Centel notes that it currently provides "similar services" to IXC's on a non-tariffed basis and opines that a contrary conclusion by the Bureau "would create additional administrative burdens and delays for a similar service were it to be provided to 900 service subscribers".⁶⁵

31. Commenter Paul Ondulich asserts that AT&T has mischaracterized the nature of his informal complaint and, in the process, mischaracterized the closely inter-related nature of Dial-It 900 service and Premium Billing.⁶⁶ Ondulich states that his alleged damages derive from a breach in AT&T's performance *per se*, i.e., under both the tariffed and the Premium Billing contract, since these are interrelated.⁶⁷ Indeed, Ondulich urges us to understand that a "direct relationship exists" between the Premium Billing contract and tariffed 900 service when a sponsor/subscriber elects to take Premium Billing. Further, both the sponsor/subscriber and the caller "see the service and the billing of the service as one single transmission service."⁶⁸ Ondulich also charges that AT&T is improperly "ambiguous" in responding to the Bureau's inquiry about disconnection of caller telephone service for failure to pay Premium Billing charges. Ondulich alleges that he has had conversations with Bell of Pennsylvania employees who assured him that disconnection by Bell of Pennsylvania would take place in such a case, and that Bell of Pennsylvania has received no instructions from AT&T about contrary procedures.⁶⁹ Ondulich observes that the Commission has a responsibility to protect both sponsors and callers (consumers) and that only tariff regulation of both 900 service and associated billing and collection services will guarantee that consumers will be protected.⁷⁰

C. Discussion

32. Pursuant to tariff, AT&T provides Dial-It 900 services to sponsor/subscribers and bills such sponsor/subscribers for tariff charges. Where sponsor/subscribers elect the Sponsor Paid option, all costs associated with callers' access to the service are paid by the sponsor/subscriber. Sponsor/subscribers who elect this Sponsor Paid option may also apply for Premium Billing which AT&T offers pursuant to contract. Premium Billing charges are charges which the sponsor/subscriber assesses callers for use of his service. Such charges do not include common carrier communications service charges. AT&T bills callers for these Premium charges on behalf of the sponsor/subscriber. Thus, when a Dial-It 900 service sponsor/subscriber also obtains Premium Billing service from AT&T, callers do not pay any tariffed communications charges but, rather, only those sponsor/subscriber charges which are the subject of the Premium Billing contract. Pursuant to that contract, AT&T collects Premium charges from callers and remits these charges to sponsor/subscribers, in the process "netting out" tariffed charges owed by the sponsor/subscriber and the charge which AT&T assesses for performance of Premium Billing.

33. The clear thrust of the Commission's Billing and Collection Order is that carrier billing and collection services should not be tariffed if such billing and collection is not an interstate common carrier communications service subject to Title II of the Act, and the provision of such services is subject to competition or the likelihood of competition.¹ In the Billing and Collection Order, the Commission investigated third party billing and collection by LECs on behalf of IXCs and determined that such billing and collection activities were not properly speaking, Title II activities because the LEC was not billing for its own telecommunications service, but rather, on behalf of another carrier, i.e., the IXC.² In such a case, the Commission concluded that there should be no requirement, pursuant to Title II of the Act, 47 U.S.C. §§ 201-224, for tariffing such third party billing and collection services.³

34. This having been decided, the Commission went on to inquire whether there was compelling reason to regulate billing and collection services pursuant to the ancillary jurisdiction provision of Title I of the Act, 47 U.S.C. §§ 152(a), 153(a) and 154(i). In this case, the Commission's analysis turned on the presence, or absence, of competition in the provision of untariffed billing and collection services. Following its investigation, the Commission concluded that competitive provision of IXC billing and collection services was both possible and a developing reality. Thus, the Commission noted that credit card companies, among others, were beginning to provide such services.⁴ Given the promise and fact of competition, the Commission concluded that tariff regulation was unnecessary to control anticompetitive behavior by third party billing and collection service providers. Therefore, the Commission ordered the LECs to detariff billing and collection service provided to third parties.

35. The Commission reaffirmed its analysis of third party billing and collection services in the shared EPSCS Order.⁵ This time, the Commission investigated an AT&T third party billing and collection service and again concluded that the service should be detariffed:

The service that AT&T provides on an off-tariff basis is analogous to billing services that some carriers provide for other carriers. The Commission has recently determined that such carrier billing services must be detariffed because such a third party billing service is not a communication services for purposes of Title II of the Communications Act. The same reasoning would appear to preclude AT&T from tariffing the billing and other managerial services that it performs for the shared user organization.⁶

36. An examination of the record before us, including AT&T's submitted Premium Billing contract, discloses that AT&T provision of Premium Billing similarly is directed to third parties (i.e., callers) on behalf of sponsors for sponsor charges only, i. e., it does not include billing for tariffed charges. As a result, we confirm that Premium Billing charges are not charges for Title II communications services and, pursuant to the Commission's Billing and Collection Order and the Shared EPSCS Order, we conclude that Premium Billing should not be provided pursuant to tariff.

37. Neither do we conclude, at this time, that such services should be regulated pursuant to Title I of the Act. We agree with AT&T and Centel that competitive billing and collection services associated with Dial-It 900 service are foreseeable and that regulation on our part may provide disincentives to competitive billing and collection providers. Further, a competitive market for Dial-It 900 services is beginning to emerge with various carriers providing such services at least on a regional basis. Finally, and pursuant to our examination of AT&T's submitted Premium Billing contract, we are convinced that AT&T has taken appropriate steps to distinguish its tariffed 900 service from Premium Billing service. We are not convinced that any connection between the two is so significant as to cause us to abandon our general conclusion, which is that charges billed pursuant to the Premium Billing arrangement are separate and apart from those tariffed communications charges billed to sponsor/subscribers by AT&T, and that Premium Billing charges are not charges for common carrier communications services.

38. For all these reasons, we find that AT&T Premium Billing arrangements should continue to be provided on a non-tariffed basis. However, we shall monitor the development of a competitive market for such services and will revisit this decision if circumstances so warrant. We remain concerned by Mr. Ondulich's allegations concerning the actual provision of Premium Billing services. We expect AT&T to instruct marketing personnel to make known the distinction between tariffed 900 service and non-tariffed Premium Billing service to subscribers who take both. In any event, this problem will only arise in connection with AT&T Dial-It 900 Information Arrangements since we today order AT&T to detariff Call Count Arrangements. Further, we instruct AT&T to take adequate steps to ensure that communications services to callers are not disconnected for failure to pay Premium Billing charges. Specifically, AT&T must ensure that Premium Billing charges are properly identified as such and that appropriate means, such as recording such charges on separate pages from those used to bill for tariffed communications services, are used to clarify the distinction between Premium Billing charges and charges for tariffed communications services. We direct AT&T to re-

port. in writing, to the Enforcement Division within 45 days of the release of this Order, detailing the steps taken to prevent improper disconnection of communications services.

IV. CONCLUSION

39. For the reasons set out herein, we find that AT&T Dial-It 900 Information Arrangement service provides sponsor/subscribers with transmission service and, thus, is properly characterizable as basic service pursuant to that definition provided by the Commission in its Computer II and Computer III decisions. We find that AT&T Dial-It Call Count service falls within the definition of enhanced services set out in 47 C.F.R. § 64.702(a) and, as a result, must be offered on a non-tariffed, competitive basis pursuant to the non-structural safeguards developed by the Commission in Computer III. Finally, we conclude that AT&T Premium Billing service, offered to Sponsor Paid option subscribers of AT&T Dial-It 900 service, is not a Title II common carrier service, is subject to current and foreseeable competition and, as a result, is properly offered by AT&T on a non-tariffed basis.

ORDERING CLAUSES

40. Accordingly, IT IS ORDERED, pursuant to the authority delegated in 47 C.F.R. § 0.291, that AT&T shall, within 45 days of the release of this Memorandum Opinion and Order, file revisions to its Tariff F.C.C. No. 1 so as to remove therefrom Dial-It 900 Call Count service.

41. IT IS FURTHER ORDERED, pursuant to the authority delegated in 47 C.F.R. § 0.291, that AT&T shall, within 45 days of the release of this Memorandum Opinion and Order, submit a report, in writing, to the Acting Chief, Enforcement Division, detailing the steps it has taken to prevent improper disconnection of communication services to callers who refuse, or otherwise fail, to pay any or all charges due and owing pursuant to AT&T's Premium Billing contract.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

¹ According to AT&T, Dial-It 900 service "is a telecommunications service which permits simultaneous calling by a large number of callers to a single telephone number utilizing the telecommunications network." Tariff F.C.C. No. 1, Section 5.1.1.

² See, e.g., Letter of Honorable Trent Lott (R-Miss), to Dennis Patrick, Chairman, FCC, File No. IC-88-02374 (Jan. 25, 1988).

³ On October 23, 1987, the Commission's General Counsel received a letter from Allen F. Wildmon, Associate Director of the National Federation for Decency, which asked whether billing and collection services offered in connection with AT&T's 900 Dial-It services are common carrier offerings. Also, an informal complaint was filed with the Commission by complainant Paul Ondulich which stated that he had obtained 900 Dial-It service and associated billing and collection services, known as

Premium Billing, from AT&T in order to conduct a nationwide poll. The complaint claimed damages for revenues allegedly lost, *inter alia*, because promised 900 numbers were not placed in operation by AT&T on a timely basis. File No. IC-88-00480. Responding to the Ondulich complaint, AT&T asserted as a defense the limitations on liability provisions in its 900 Dial-It service tariff while continuing to maintain that associated billing and collection services were properly provided to complainant on a non-tariffed, contractual basis. Letter of Michael J. Kmetz, District Manager, AT&T, to Anita J. Thomas, Informal Complaints and Public Inquiries Branch, Enforcement Division (Nov. 24, 1987).

⁴ Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 85-229. Report and Order, 104 FCC 2d 958 (1986) (*Phase I Order*), modified on reconsideration, 2 FCC Rcd 3035 (1987) (*Phase I Recon. Order*), *aff'd on recon.*, 3 FCC Rcd 1135 (1988), petition for review pending sub nom., California v. FCC, Case No. 87-7230, (9th Cir. filed May 28, 1987); See also, *Third Computer Inquiry*, Report and Order (Phase II Order) 2 FCC Rcd 3072 (1987), modified on recon., 3 FCC Rcd 1150 (1988), petitions for review sub nom., BellSouth v. FCC, Case No. 88-7290, (9th Cir. filed April 30, 1988); Illinois Bell Telephone Company v. FCC, Case No. 88-1364, (D.C. Cir. filed May 16, 1988).

⁵ See, *In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations* (Computer II) 77 FCC 2d 384 (1980), *Recon.*, 84 FCC 2d 50 (1981), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

⁶ *Computer II Reconsideration*, 84 FCC 2d 50, 53.

⁷ *Computer II Reconsideration*, 84 FCC 2d 50, 54-55; 77 FCC 2d 384, 419-421. The Commission's definition of enhanced services, developed in Computer II, is codified in 47 C.F.R. § 64.702(a).

⁸ *Computer II Reconsideration*, 84 FCC 2d 50, 53-55.

⁹ *Id.*, 56. As an example of such network control features, the Commission identified "choke" techniques built into the network in order to block excessive calls and to avoid congestion and interference with non-Dial-It 900 Service traffic. *Id.*

¹⁰ *Id.*

¹¹ See, AT&T Tariff No. 263, Transmittal No. 14085 (1982).

¹² Letter from Gary M. Epstein, Chief, Common Carrier Bureau to W.E. Albert, Administrator, Rates and Tariffs, AT&T Long Lines (Oct. 21, 1982).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See, Letter of Gerald Brock, Chief, Common Carrier Bureau, to Daniel Culkin, AT&T (Feb. 26, 1988) (AT&T Inquiry).

¹⁶ *Id.*

¹⁷ Public Notice, DA 88-420 (released April 4, 1988).

¹⁸ Central Telephone Company (Centel), Telesphere International, Inc. (Telesphere) and Paul J. Ondulich (Ondulich).

¹⁹ AT&T response, 18-19.

²⁰ *Id.*, 19. When AT&T anticipates that a sponsor's program will exceed available network capacity, the sponsor's program can be routed to 12 additional "mini-nodes" increasing overall network capacity to 17,920 calls. *Id.*, n.2.

²¹ *Id.*

²² *Id.*, 19-20.

²³ *Id.*, 20. The message acknowledging the call states "Thank you for calling [AT&T's] DIAL-IT 900 Service. Your call has been completed and registered." According to AT&T, this mes-

sage is necessary "so that callers will know that calls have been completed, and to prevent callers from re-dialing in the mistaken belief that calls did not get through." *Id.*, 21.

²⁴ *Id.*, 21, and citing Computer III, 50 Fed. Reg. 33581, 33593 (August 20, 1985); Computer II, 77 FCC 2d 384, 421 (1980).

²⁵ *Id.*

²⁶ *Id.*, 21-22.

²⁷ *Id.*, 22.

²⁸ Commenter Paul Ondulich did not address this issue, *per se*, but insisted that AT&T should not be allowed to plead the limitations of liability language in its tariff as a defense to a failure to provide services ordered. According to Mr. Ondulich, such a failure properly constitutes "a grossly negligent act" which cannot be excused pursuant to the tariff's limitations on liability section. Ondulich Comments, File No. ENF-88-05 (May 6, 1988), p. 5.

²⁹ Comments of Central Telephone Company (Centel), File No. ENF-88-05, (May 5, 1988), p. 3.

³⁰ *Id.*

³¹ Comments of Telesphere International, Inc. (Telesphere), File No. ENF-88-05 (April 29, 1988), p. 2.

³² *Id.*

³³ *Id.* Paul Ondulich provided no comments regarding whether such services are basic or enhanced.

³⁴ *Computer II Reconsideration*, 84 FCC 2d 50, 53.

³⁵ Specifically, the Commission previously has concluded that mass announcement Dial-It services provided by AT&T were enhanced services where subscriber information is stored in the network for purposes of caller interaction. *Computer II Reconsideration*, 84 FCC 2d 53-55.

³⁶ 47 C.F.R. § 64.702(a).

³⁷ *Id.*

³⁸ See Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services (CC Docket No. 79-252), First Report and Order, 85 FCC 2d 1 (1980).

³⁹ *Computer II Reconsideration*, 84 FCC 2d at 55-56.

⁴⁰ See n.25, *supra*.

⁴¹ See pp. 6-7, *supra*.

⁴² Our decision that AT&T may not render Call Count service pursuant to tariff renders moot consideration of whether AT&T may properly offer promotional compensation, pursuant to tariff, for such service. See AT&T Inquiry, p. 4, question no. 2. (AT&T has removed promotional compensation provisions from its tariff offering of Information Arrangement service. See AT&T Reply, p. 5.)

⁴³ *Phase I Order*, 104 FCC 2d 958; *Phase I Recon. Order*, 2 FCC Rcd 3035. *Inter alia*, Computer III allows certain dominant carriers, including AT&T, to provide enhanced services on an unseparated basis so long as such carriers file plans disclosing appropriate provision of interconnection to enhanced service competitors and appropriate cost allocation, and that they will provide network information and customer proprietary network information pursuant to mandated disclosure requirements. *Id.*

⁴⁴ *Supra*, n.2.

⁴⁵ *Id.*

⁴⁶ AT&T Inquiry, 1-2.

⁴⁷ *Id.*

⁴⁸ AT&T Reply, 1-3. AT&T stipulates that actual billing and collection for subscriber charges to callers is undertaken by LECs who also bill sponsor/subscribers pursuant Dial-It 900 services tariff charges owed to AT&T. *Id.*, 7-8.

⁴⁹ *In the Matter of Detariffing of Billing and Collection Services*, 102 FCC 2d 1150 (1986) (Billing and Collection Order).

⁵⁰ *In the Matter of American Telephone and Telegraph Co., Arrangement for Sharing of EPSCS*, Memorandum Opinion and Order, 2 FCC Rcd 46 (1986) (Shared EPSCS Order).

⁵¹ AT&T Reply, 11 and citing Tariff F.C.C. No. 1, section 5.1.2.E.

⁵² *Id.*, 12. Under AT&T's Dial-It 900 services tariff, sponsor/subscribers are always liable for certain tariffed charges, e.g., installation and discontinuance fees. However, sponsor/subscribers may elect various options for billing and collection of postalized caller charges. Under the full Sponsor Paid option, the sponsor/subscriber pays all such charges. Under the Caller Option, callers are billed tariffed charges by AT&T. Under the third option, the sponsor/subscriber and the caller each pay part of the caller charge. See Tariff F.C.C. No. 1 §§ 5.1.2.E *et seq.*

Only sponsor/subscribers who elect the Sponsor Paid option, i.e., where the sponsor/subscriber assumes the obligation to pay all tariffed charges, including caller charges, may apply for Premium Billing. Premium Billing charges are not tariff charges, rather, they are charges assessed by the sponsor/subscriber against callers for caller use of the information service provided by the sponsor/subscriber. AT&T, pursuant to the Premium Billing Contract, bills callers for such charges and remits them to the sponsor/subscriber.

⁵³ *Id.*, and see Attachment C, "Agreement for Billing by AT&T of Charges for Vendor Products or Services" (Premium Billing Contract), §§ 5.1 and 5.2.

⁵⁴ AT&T Reply, 13 and n.2.

⁵⁵ *Id.*, 15.

⁵⁶ *Id.*

⁵⁷ *Id.*, 16, and citing Tariff FCC No. 1, Section 5.1.3.B.4. A 2,000 call/call minute minimum is imposed on Information Arrangement sponsor/subscribers and a 500 call minimum is imposed on Call Count sponsor/subscribers.

⁵⁸ *Id.*, 17.

⁵⁹ *Id.*, 7-8.

⁶⁰ *Id.*, 9 and citing Billing and Collection Order, 102 FCC 2d 1150, 1171, n.53.

⁶¹ *Id.*, 10.

⁶² *Id.*, 22-23.

⁶³ *Id.*

⁶⁴ Centel, 3-4.

⁶⁵ *Id.*

⁶⁶ Ondulich, 3-6.

⁶⁷ *Id.*, 4-5.

⁶⁸ *Id.*, 6, and Attachment A thereto.

⁶⁹ *Id.*

⁷⁰ *Id.*, 6-7. Telesphere provided no comments regarding regulation of third party billing and collection services.

⁷¹ 102 FCC 2d 1150 (1986).

⁷² 102 FCC 2d 1168-1169. The Commission affirmed that LEC billing and collection for its own communications services must be tariffed. *Id.*, 1168.

⁷³ *Id.*

⁷⁴ *Id.* As AT&T correctly noted, the Commission specifically mandated LEC provision of calling information to facilitate provision of billing and collection by competitive entities, 102 FCC 2d 1171, n.53.

⁷⁵ *Shared EPSCS Order, supra.*